The opinion in support of the decision being entered today
was **not** written for publication and
is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte REINER KRAFT and JOANN RUVOLO

Appeal No. 2006-2111
Application No. 09/768,458
Technology Center 3600

ON BRIEF

Before OWENS, LEVY and NAPPI **Administrative Patent Judges.**
NAPPI, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the examiner's rejection of claims 1 through 13 and 15 through 33. Claim 14 has been canceled. For the reasons stated *infra* we will not sustain the examiner's rejection of claims 1 through 13 and 15 through 33.

THE INVENTION

The invention relates to a system for enhancing sales for service providers. The system identifies windows of opportunity, time and location, where people have been affected directly by a change in schedule (i.e, delay in travel). These windows of opportunity are then provided to service providers to enhance sales (by providing services

to the passengers waiting because of the delay). See pages 6 and 9 of appellants' specification. Claim 1 is representative of the invention and is reproduced below:

> 1. A system for enhancing sales for service providers by utilizing an opportunistic approach based on an unexpected change in a schedule of service, said system comprising:
>
> an event retriever, said event retriever generating an event pair which comprises a target value and an actual value associated with said schedule of services;
>
> an event observer, said event observer receiving said event pairs from said event retriever, calculating the difference between said actual and target value, and based on one or more rules from a first set of rules, identifying and notifying a window of opportunity detector regarding potential windows of opportunities, wherein each potential window of opportunity defines a time period of customer inactivity;
>
> said window of opportunity detector, which receives said potential windows opportunities, detects, based on one or more rules from a set of second rules, if a window of opportunity exists, and if so, matches said detected windows of opportunities with service providers for the purposes of providing a new product or a service separate from said scheduled service.

THE REFERENCE

The references relied upon by the examiner is:

Conrad et al.	6,810,527	Oct. 26, 2004 (Sep. 27, 1999)

THE REJECTIONS AT ISSUE

Claims 1, 2, 5 through 10, 12, 15 through 17, 19 through 28, 32 and 33 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Conrad. The examiner's rejection is set forth on pages 3 and 4 of the answer. Claims 3, 4, 11, 13, 18 and 29 through 31 stand rejected under 35 U.S.C. § 103 as being unpatentable over Conrad. The examiner's rejection is set forth on pages 5 and 6 of the answer. Throughout the opinion we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejection and the arguments of appellants and the examiner, for the reasons stated *infra* we will not sustain the examiner's rejections of Claims 1, 2, 5 through 10, 12, 15 through 17, 19 through 28, 32 and 33 under 35 U.S.C. § 102 and Claims 3, 4, 11, 13, 18 and 29 through 31 under 35 U.S.C. § 103.

Conrad relates to a system for distributing media to aircraft passengers. See abstract. The system delivers live and pre-recorded television content to the aircraft via satellite and ground based data links. The content can be tailored based upon various criteria and can include targeted advertisements. See Abstract. The system receives status information from the aircraft to manage the system and to reconcile and provide payment to content providers. See column 4, lines 51 through 54. A central Global Operations Center can create the playout schedule (we consider to the schedule of playing the media) or the playout schedule can be generated by onboard equipment. See column 6, lines 45 through 41. The content and schedule are based upon several factors including flight time. See column 7, lines 39 through 41, column 8, lines 50 through 60. The playout schedule may also be modified if there are delays which arise during the flight. See column 10, lines 34 through 40, column 11, lines 8 through 14.

Appellants argue on page 8 of the brief, that the Conrad reference which is concerned with distributing video content to airlines does not teach generating an event pair based upon a target value and an actual value as claimed in claim 1. On page 9 appellants argue that Conrad does not teach calculating a difference between the pairs and determining a window of opportunity (a period of customer inactivity) based upon a first set of rules as claimed in claim 1. On page 10 of the brief, appellants argue that Conrad does not teach matching a detected window of opportunity with a service provider and providing a new product or service to passengers during the period of inactivity (i.e., if a train is delayed, offering services such as a cab, food magazines etc.).

The examiner's response to appellants' arguments is on pages 6 through 9 of the answer. On pages 6 and 7 of the answer, the examiner equates the airline to appellants' claimed "event receiver" and "an arrival or departure time to an actual arrival or departure item as a target value and an actual value. Thus an airline as set forth in the Final Office Action or June 29, 2005 defines the airline as an event retriever that can perform the tasks ... to determine/generate an event pair (arrival/departure-actual arrival/departure) as claimed." On page 7 of the answer, the examiner equates appellants' claimed event observer with Conrad's teaching of a Local Operations Center and a Global Operations Center which determine which content to be played on the aircraft. On page 8 of the answer, the examiner states:

> Play-out schedules are created to maximize the value to passengers and to advertisers (windows of opportunity) thus, the play-out schedules matches the needs of the passengers with the desires of the advertisers to tailor to passengers while inactive and to fill requests of advertisers via advertisement slots ("if so, matches said detected windows of opportunities with service providers" as claimed).

We do not find that that Conrad discloses the claimed invention. Claim 1 recites an event retriever which generates an event pair of values associated with the schedule of service and proposes "providing a new product or a service separate from said scheduled service." The examiner in rejecting the claims equates the flight schedule with the

claimed schedule of services. From the examiner's statements, on pages 4 and 7 of the answer, it appears that the examiner is considering the delay created during the flight to be the window of opportunity. On page 8 of the answer, it appears that the examiner is equating the new product or service provided to be the changes in the media content provided to the user. While we concur that there are two services discussed in Conrad, the flight and the media to be played on the aircraft, as discussed *supra* these services are interrelated in that the schedule of the media is based upon the flight schedule. Thus, any changes to the flight schedule would apply to changes to the media schedule as well, and as such, are not for purposes of providing a new product or service separate from the scheduled product or service. Rather they are merely adjustments to the scheduled services.

Further, Claim 1 also recites that the difference between the event pairs is used to identify the windows of opportunity. The examiner has not shown however, that windows of opportunity are calculated based upon differences between actual and target values in the aircraft's flight schedule; or that these differences are used for the purposes of identifying windows of opportunity. We note that Conrad is silent as to a comparison of target vs. actual arrival and departure times to determine flight delays. We do not consider the examiner's inference that Conrad determines delay by determining the difference between target and actual times to be supported by evidence of record, nor do we find that such a feature is inherent in Conrad. While, systems such as Conrad's may compare target vs. actual times to determine delay (i.e., a delay of 30 minutes calculated according to a plane scheduled to depart at 4:00 actually departing at 4:30) , we do not find that performing such a calculation is inherent in Conrad as Conrad may also calculate delay based upon other data such as weather impacting the aircraft speed, or flight distance thereby increasing flight time (i.e., a plane traveling at 400 miles/hr is delayed by 30 minutes by being forced to travel 200 miles out of the way to avoid bad weather).

Thus, we do not find that the examiner has demonstrated that Conrad discloses all of the limitations of independent claim 1 or the claims dependent thereon, claims 2, 5 through 10 and 12. Accordingly, we will not sustain the examiner's rejection of claims 1, 2, 5 through 10 and 12 under 35 U.S.C. § 102(e).

Claims 3, 4, 11 and 13 are dependent upon claim 1 and are rejected under 35 U.S.C. § 103 over Conrad. As discussed above, we do not find that Conrad discloses the features of claim 1, nor do we find that the examiner has presented objective evidence that the features of claim 1 would be obvious. Accordingly, we will not sustain he examiner's rejection of claims 3, 4, 11 and 13 under 35 U.S.C. § 103.

Independent claims 15, 20 and 33 are of different scope than claim 1 in that they do not contain limitations directed to calculating the difference between target and actual values. However, they do recite detecting a change in a schedule of service and offering a new product or service separate from said scheduled service to said potential customer. As discussed *supra* with respect to claim 1, we do not find that Conrad discloses or makes obvious this feature. Accordingly, we will not sustain the examiner's rejection of claims 15 through 17, 19 through 28, 32 and 33 under 35 U.S.C. § 102 as being anticipated by Conrad or the examiner's rejection of claims 18 and 29 through 31 under 35 U.S.C. § 103 as being unpatentable over Conrad .

For the forgoing reasons, we will not sustain the examiner's rejection of claims 1, 2, 5 through 10, 12, 15 through 17, 19 through 28, 32 and 33 under 35 U.S.C. § 102 as being anticipated by Conrad. Nor will we sustain the examiner's rejection of claims 3, 4, 11, 13, 18 and 29 through 31 under 35 U.S.C. § 103 as being unpatentable over Conrad. The decision of the examiner is reversed.

REVERSED

TERRY J. OWENS
Administrative Patent Judge

STUART S. LEVY
Administrative Patent Judge

ROBERT E. NAPPI
Administrative Patent Judge

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